

LAW OFFICES OF
WOOD TATUM SANDERS & MURPHY

FOUNDED 1870

ROBERT I. SANDERS
 CRAIG C. MURPHY
 JOHN C. MERCER *
 TODD A. ZILBERT **

1001 SOUTHWEST FIFTH AVENUE, 13TH FLOOR
 PORTLAND, OREGON 97204-1151
 TELEPHONE (503) 224-5430
 FAX (503) 241-7235
 INTERNET taz@woodtatum.com

ERSKINE WOOD
 (1879-1983)
 LOFTON L. TATUM
 (1918-1992)
 PAUL N. WONACOTT
 (1939-1991)

ALSO ADMITTED IN:
 WASHINGTON *
 CALIFORNIA & WASHINGTON **

October 6, 2000

Mr. Eric Blischke
 Coordinator, Portland Harbor Study Area
 Voluntary Cleanup and Portland Harbor Section
 Oregon Department of Environmental Quality
 2020 SW Fourth Avenue, Suite 400
 Portland, OR 97201-4987

NORTHWEST REGION

OCT 09 2000

Re: Fred Devine Diving & Salvage
 6211 N. Ensign Street
 Portland, OR 97217

**DEPT OF ENVIRONMENTAL QUALITY
 RECEIVED**

Dear Eric:

Thank you for your August 2, 2000, letter and for meeting with us on July 27, 2000. We apologize for our delay in responding. For part of this time I was on leave for the birth of my daughter. Later, Mr. Leitz was unavoidably detained, assisting in the cleanup of the 15-mile Creek Spill near The Dalles. We regret any inconvenience to you.

As we discussed July 27, it is Fred Devine Diving & Salvage's position that there has been no release on the property that would necessitate participation in the voluntary cleanup program or support a unilateral order for remedial investigation at the site. The FDD&S facility consists of a small office building, two warehouses, shop space, and outdoor storage. There are no regular operations at the facility except maintenance of equipment used in the principal business of FDD&S, diving and salvage, which of course occurs off site.

DEQ's Strategy Recommendation for this site contains nothing linking site activities to contamination at the facility nor in the Willamette River sediments. The Strategy Recommendation notes that boats tie up at the facility's dock, and that Portland Steam Navigation Co. leased dock and office space for operation of the boat "Portland Rose." No release from any boat is documented. Moreover, we do not believe that a release from a

vessel afloat on the river would constitute a release from the facility for which FDD&S is responsible. Under both state and federal law, the vessel itself would be deemed the facility.

The Strategy Recommendation notes the removal of three USTs from the site in 1993, but that "DEQ records indicate that the three tanks had not leaked and that the tank closures were clean."

The Strategy Recommendation says Pacific Coast Environmental operated as a hazardous waste generator from the facility until 1995, and that DEQ received a complaint concerning possible dumping at the facility, but that DEQ "site visit found no violations" The fact that PCE operated at the facility does not, alone, constitute a release. DEQ's site visit tends to indicate that there was no release, in fact.

The Strategy Recommendation, in short, supports FDD&S's contention that there has been no release at the facility that would justify DEQ intervention.

The source of pollution that is at the heart of the strategy recommendation, and the one we feel is the sole reason for DEQ's interest in the facility, is the storm sewer outfall at the base of Ensign Street adjacent to the site. The Strategy Recommendation notes two occurrences, a March 10, 1999, petroleum sheen and a June 24, 1980, petroleum sheen. In fact, FDD&S has for years reported to the Coast Guard oily water and other discharges from the outfall that produce sheen in the lagoon. FDD&S has *never* been linked to even one of those discharges. In many cases, the Coast Guard does not even bother to investigate.

It seems highly unlikely, and completely arbitrary, that the fact that FDD&S is one of several property owners, including the City of Portland, that contribute runoff to the outfall would justify enforcement action by DEQ at the FDD&S facility. There is no more reason to target FDD&S as a "high priority" for inclusion in the voluntary cleanup program than any other facility contributing to the outfall, including the City.

As we understand the scope of DEQ's current investigation, it is restricted to releases at the site and pathways from the facility to the Willamette River. It does not encompass releases that occurred directly to the river. It is therefore not clear that discharges from the outfall are even within the scope of the current investigation.

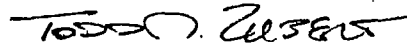
The Strategy Recommendation concludes, "There is insufficient information to propose adding the site to DEQ's Confirmed Release List or Inventory." In fact, there is insufficient information to justify any activity by DEQ with respect to this facility.

FDD&S is unwilling at this time to enter the voluntary cleanup program. There is not sufficient justification for signing up.

Mr. Eric Blischke
October 6, 2000
Page 3

You have indicated that DEQ would like FDD&S to perform some further investigation and we assume that would include investigation outside the formal program. FDD&S is willing to engage a contractor to again update the phase I environmental assessment performed in July 1992 and to share the results of that work with DEQ. We would be happy to discuss the parameters of such an investigation with you. If this is something you would like to pursue, please give me a call at your convenience.

Very truly yours,



Todd A. Zilbert